

## **REMARKS**

The Office Action mailed on April 3, 2007, considered and rejected claims 1-5. Claims 3 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Matsushima* (U.S. Patent Pub. No. 2002/0159592) in view of *Giaccherini* (U.S. Patent Pub. No. 2002/0085588). Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Matsushima* and *Giaccherini* in view of Official Notice. Claims 1 and 2 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Matsushima* and *Giaccherini* in view of *Tehranchi* (U.S. Patent No. 7,043,019).

By this paper, claim 3 has been amended while claims 5-19 have been added, and no claims have been cancelled.<sup>1</sup> Accordingly, following this paper, claims 1-19 are pending, of which, claims 1 and 3-5 are the independent claims at issue.

As reflected above, the pending claims generally relate to methods and systems related to storing, loading, and/or displaying audiovisual files. As reflected in claim 1, for instance, a method includes receiving an audiovisual master file from a movie recording studio or other organization containing an audiovisual presentation such as a to-be-released or recently released movie. The received audiovisual master file is in a first encoded and compressed format and watermark characters and camera artifacts are added to the file. The file is further encrypted and keys associated with the encrypted file are generated. The file and associated keys are further transmitted to a distribution point host computer, and the encrypted master file is loaded thereon. A link is made between the distribution point host computer and a self-contained entertainment device. The link establishes bidirectional authentication between the distribution point host computer and the self-contained entertainment device through use, in part, of an input-output of the self-contained entertainment device. After bi-directional authentication occurs, the distribution point host computer is used to delete at least some of the previously loaded encrypted encoded audiovisual master files from the self-contained entertainment device. The distribution point host computer is further used to transfer the newly loaded encrypted encoded audiovisual master file and keys associated with the newly loaded encrypted encoded audiovisual master file to the self-contained entertainment device to which the distribution point host computer is linked without decryption of the newly loaded encrypted encoded audiovisual master

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<sup>1</sup> Support for the claim amendments may be found within the Applicant's application as originally filed. For example, amendments to at least claim 1 were made to correct typographical errors. All amendments and new claims are clearly supported at least by the disclosure in paragraphs 16-27 as numbered in the U.S. Patent Application Publication No. 2005/0055278, as well as in the originally filed claims and figures.

file being transferred to the self-contained entertainment device. The newly loaded encrypted encoded audiovisual master file and the keys associated with the newly loaded encrypted encoded audiovisual master file are also stored on an encrypted hard drive of the self-contained entertainment device. Claim 4 recites a similar method but, among other things, lacks certain claim elements related to adding watermarks and camera artifacts.

Claim 3 is directed to a system that includes sound output and a video display. A processor is also included. Encrypted audio visual files are stored on an encrypted hard drive, and a hard drive encryptor is configured to decrypt the encrypted hard drive. A file decryptor is provided for decrypting the encrypted files. Also included is an input-output with a unique physical configuration, along with an input-output authenticator for authenticating a device attempting to link to the input-output. A case is secured with anti-tamper fasteners and an evidentiary seal is positioned to rupture when a portion of the case is disassembled. Claim 5 relates generally to the system of claim 3 but, among other things, lacks certain claim elements related to the input-output and the case and evidentiary seal.

### **Rejections under 35 U.S.C. § 103(a)**

As noted above, each of the previously pending claims was rejected under 35 U.S.C. § 103(a) as being unpatentable over a combination of two or more of *Matsushima*, *Geiaccherini*, *Tehranchi* and Official Notice. As is axiomatic, a claim is unpatentable in view of 35 U.S.C. § 103(a) only if the claim would have been obvious to one of ordinary skill in the art at the time the invention was made. To make such a determination, the Office considers various basic factual inquiries as set forth in *Graham v. John Deere Co.* Such inquiries include:

- (A) Determining the scope and content of the prior art;
- (B) Ascertaining the differences between the claimed invention and the prior art; and
- (C) Resolving the level of ordinary skill in the pertinent art.

See *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966); MPEP § 2141 *et seq.*

Significantly, in performing the second inquiry, the claimed invention and the prior art may not be considered on a piece-meal basis. Rather, in “***determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would***

***have been obvious.***” *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983); MPEP § 2141.02. Consequently, ***it is improper to distill the invention “down to the ‘gist’ or ‘thrust’” as such “disregards the requirement of analyzing the subject matter ‘as a whole.’”*** *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983); *Bausch & Lomb v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 230 USPQ 416 (Fed. Cir. 1986). Moreover, as the prior art is considered, the art must be considered in its entirety, even including “portions that would lead away from the claimed invention.” *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983).

In view of such requirements for obviousness, Applicants respectfully submit that the Office has failed to establish a *prima facie* case of obviousness as it has at least failed to consider the claimed invention and prior art in their entireties, as required. For instance, among other things, the cited art fails to disclose, suggest, or reasonably support use of a distribution point host computer to delete previously loaded encrypted encoded audiovisual master files from a self-contained entertainment device, a hard drive decryptor configured to decrypt an encrypted hard drive, or an input-output with a unique physical configuration, as recited above in combination with their respective claim elements.

In particular, *Matsushima* relates to a content reception terminal that operates over the Internet. As part of a content reception system 1, there are various components, including a distribution server 101, a content reception terminal 102, and a recording medium 103. (¶ 31). In operation, the distribution server and the content reception terminal are connected via the Internet. (¶ 32). The distribution server records digital works such as music, movies, game software, and still images, along with a list of such works. (*Id.*). When requested by the terminal, the distribution server sends the list of digital works to the content reception terminal apparatus via the Internet. (*Id.*). The content reception terminal receives the list, and also receives corresponding digital works and records such works to the recording medium. (¶ 33). The digital works transmitted to the content reception terminal may be encrypted using an encryption algorithm, and encryption keys may also be provided to the content reception terminal by the distribution server. (¶¶ 43-48).

To allow display of the digital works, an authentication unit 134 may be included on the storage medium, and a corresponding authentication unit 128 may be provided on the content

reception terminal. (§ 58). When the authentication unit on the storage unit authenticates the content reception terminal to be valid, and the authentication unit on the terminal validates the storage to be valid, information may be written and/or retrieved from a secure data area of the medium. (§ 60). In operation, the content reception terminal is a set top box, and the set top box includes the authentication unit 128 to authenticate between the terminal and the recording medium. (§§ 70, 86, 114).

*Giaccherini* relates to a method for securely distributing and updating digital content, and particularly to providing copy-proof digital content. As part of the system, a movie studio or other content provider utilizes satellite communication to convey the information to publishers, databases, server farm libraries, movie theaters, and/or users. (Fig. 1B). More particularly, users may receive such content through an antenna that receives satellite communication. The antenna then conveys information to a set top box that can be connected to a display. (FIG. 2). Other mechanisms may also include terrestrial delivery; however, the methods for delivery data to the user (and more particularly to an encrypted storage device 50) utilizes “existing communications channels.” (§ 54, FIGS. 4, 5).

*Tehranchi* relates to devices and methods for displaying a copy-deterrent pattern within a motion picture to discourage recording of a motion picture using a video camera. (Abstract). For instance, symbols, random patterns, digital watermarks, or text messages may be provided in multiple pixels of each frame and modulated at a frequency that is imperceptible to humans but visible in any copy made with a video camera. (*Id.*).

As noted by the Office, none of the cited art appears, in any manner, to disclose a distribution point host computer that causes deletion of audiovisual master files from a self-contained entertainment device, as recited in claims 1 and 4. The Office summarily asserts, however, that “it would have been obvious to have used the distribution point host computer to delete at least some of the previously loaded encrypted encoded audio visual master files from the self-contained entertainment device to make storage space available on the hard drive of the self-contained entertainment device so that the new content can be loaded [o]nto the self-contained entertainment device.” (Office Action, p. 4). Applicant respectfully disagrees.

It should be noted that the rationale for modifying the cited references is to provide space for additional content. Such rationale does not, however, provide any reason why the *Matsushima* reference would be modified so that such *deletion is done using the distribution*

***point host computer*** as opposed to simply using the terminal device. Indeed, the more logical rationale is that a user would be granted control over their set-top box to determine what programs to control, record, delete, etc. There does not appear to be any reason why the distribution system would be granted such access, and the Office has specifically failed to provide any reason why it would be obvious to modify the cited references to grant such access to the distribution system.

In other words, the Office has merely distilled the claim element to a general “gist” of deleting content, but has failed to consider the claim as a whole. In the claim as a whole, the distribution point host computer is used for deletion at a terminal. Such is clearly contrary to the requirements that a claim be considered as a whole and not distilled into a general idea. Moreover, the *Matsushima* reference, when combined with the other art of record, discloses a system in which the storage and client terminal authenticate to each other, but no such similar authentication appears to be present from the distribution system to the terminal device/storage. Without the distribution system authenticating itself, the terminal device could have no reason to know if the motives for a delete command, so as to determine if the command is malicious or not.

Applicant further notes that the Office has acknowledged that the cited references fail to disclose an input-output with a unique physical configuration as recited in claim 3. (Office Action, p. 5). The Office concludes, however, that it would have been obvious to have such an input-output so that only an object or item with the unique physical configuration would connect to the input output. (*Id.*). Applicant respectfully disagrees.

As noted previously, each claimed invention and the cited references must be considered in their entireties. In the art of record, and particularly considering *Matsushima* and *Giaccherini*, the cited art discloses systems for remote distribution of content. The rationale for modifying the cited references, as provided by the Office, only makes sense to the extent a local, physical connection is made between the various devices. However, inasmuch as the cited references specifically relate to remote distribution over already existing communication channels, there would be no reason to modify the system to include unique physical I/O components. Indeed, such components would make the terminal unsuitable for its intended purpose as the unique I/O component would likely be unable to communicate using the exiting remote communication mechanisms. Further, inasmuch as *Matsushima* describes content being distributed over

standard communication channels provided by the Internet, and *Giaccherini*, digital content is provided over “existing communication channels,” “local, standard data delivery methods,” “VHF and UHF television broadcast channels,” and the like, the cited art expressly teaches away from using proprietary or unique physical connections as they would not work with existing channels/methods. Indeed, even non-standard mechanisms in the art are limited to wireless communication which again would require no unique physical I/O component.

Applicant further notes that with respect to claims 3 and 5, the claimed system includes a hard drive decryptor and a file decryptor, as such are recited in combination with the other claim elements. It will be noted that the Office considers the decryption key of *Matsushima* to be the file decryptor, and the data encryption/decryption 52 of *Giaccherini* to be the hard drive decryptor configured to decrypt the encrypted hard drive. Applicant respectfully disagrees. For instance, the encryption/decryption of *Giaccherini* is expressly described as providing functions on “data.” In contrast, the recited hard drive decryptor is configured to decrypt the hard drive. Thus, in the pending claims, the decryptors include each of a device and data/file decryptor. In the cited art, however, all decryption is performed on data/files.

### **Conclusion**

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. Similarly, all newly added claims are dependent on those claims specifically addressed and are therefore allowable over the art of record for at least the same reasons. It will be appreciated that Applicant does not acquiesce to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any Official Notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required reason why one skilled in the art would have, at the time the invention was made, modified the cited art in the manner officially noticed.

Applicant further notes that the various claim amendments presented herein have been made without regard to the rejections supplied by the Office. In particular, claim 3 has been

amended to correct obvious typographical errors. Consequently, inasmuch as the rejections of record are clearly erroneous, Applicant respectfully submits that any subsequent action must be made non-final as any revised action will rely on arguments or art not necessitated by this amendment.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 415-3000

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Respectfully submitted,

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